
Highlights of Chapter:

- ◆ Procurement Standards
- ◆ Construction Requirements
- ◆ Professional Services

Procurement Standards.

1. **General.** A State shall follow the same policies and procedures it uses for procurement from its non-Federal funds. The State shall ensure that every purchase order or other contract includes any clauses required by Federal statutes and executive orders and their implementing regulations. Subrecipients of States shall follow the procurement requirements imposed upon them by the States. Other recipients and subrecipients will follow OMB Circular A-110.
2. **Standards.** Recipients and subrecipients shall use their own procurement procedures and regulations, provided that the procurement conforms to applicable Federal law and the standards identified in the Procurement Standards Sections of 28 CFR Parts 66 and 70. Any recipient/subrecipient whose procurement system has been certified by a Federal agency is not subject to prior approval requirements of 28 CFR Parts 66 and 70. The awarding agency's prior approval will only be required for areas beyond limits of the recipient/subrecipient certification.
3. **Adequate Competition.** All procurement transactions, whether negotiated or competitively bid and without regard to dollar value, shall be conducted in a manner so as to provide maximum open and free competition. All sole source procurements in excess of \$100,000 must receive prior approval of the awarding agency. Interagency agreements between units of government are excluded from this provision.
4. **Non-competitive Practices.** The recipient/subrecipient shall be alert to organizational conflicts of interest or non-competitive practices among contractors which may restrict or eliminate competition or otherwise restrain trade. Contractors that develop or draft specifications, requirements, statements of work, and/or Requests for Proposals (RFPs) for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement. Any request for exemption must be submitted in writing to the awarding agency.

Construction Requirements. The following policies and procedures relevant to construction are applicable to recipients/subrecipients. For the purpose of determining the appropriate fund ratios for construction projects, refer to the legislation which authorizes the construction.

1. **Under the Juvenile Justice Act (OJJDP),** construction means the acquisition, expansion, remodeling, and alteration of existing buildings and initial equipment of any such buildings or any combination of such activities (including architects' fees, but not the cost of acquisition of land for buildings).
2. **Under the Boot Camp Initiative,** construction means the erection, acquisition, renovation, repair, remodeling or expansion of new or existing buildings or other physical

facilities, and the acquisition or installation of initial equipment.

Initial equipment includes heating, plumbing, air conditioning, and electrical services and similar fixed equipment items but does not include equipment not inherently a part of the facility, such as office furniture and equipment.

3. **Qualifications.** When considering the use of agency funds for construction, recipients/subrecipients must be cognizant of the following qualifications as to their use:
 - a. Costs which are incurred as an incidental and necessary part of a program and which are for renovation, remodeling, maintenance, and repair costs which do not constitute capital expenditures ARE generally allowable but may NOT exceed 10 percent of total project costs, unless that is the purpose of the project.
 - b. The total cost of a construction project includes the cost of site preparation, including demolition of existing structures. Any proceeds realized for site preparation activities (e.g., salvage value of structures demolished or the proceeds from sale of timber) shall be applied to the project (program income) and used to reduce the total cost of the construction project.
 - c. Payment of relocation costs shall be in accordance with the "Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970," 42 USC 4601, et seq.
 - d. Funds may not be obligated by recipients/subrecipients until recipients/subrecipients have contacted OJP and assisted OJP in satisfactorily completing any applicable OJP procedures by complying with the National Historic Preservation Act, the National Environmental Policy Act, and other related federal environmental impact analyses requirements.
4. **Special Fiscal Conditions for Construction Projects.** The awarding agency may accept the bonding policy and requirement of the subrecipients provided those policies adequately protect Federal dollars. When the awarding agency determines that their recipients of funds have policies in place that do not protect the Federal dollars the awarding agency shall require:
 - a. A bid guarantee equivalent to 5 percent of the bid price. The bid guarantee must consist of a firm commitment, such as bid bond, certified check, or negotiable instrument accompanying a bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified after the forms are presented to him/her.
 - b. A performance bond on the part of the contractor for 100 percent of the contract price. "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to

ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

5. **Payment of Money Guaranteed by Federal Government.** Where the Federal government guarantees the payment of money borrowed by a recipient or subrecipient, the State may, at its discretion, require adequate bonding and insurance if the bonding or insurance requirements of the recipient or subrecipient are not deemed sufficient to adequately protect the interest of the Federal government. In those instances where construction of facility improvements for less than \$100,000 are contemplated and the subrecipient does not have any requirements for bid guarantees, performance bonds, and payments bonds, the State will impose State requirements on the subrecipients.
6. **Special Requirements for Juvenile Justice Act Construction Projects.**
 - a. Matching Requirement. Juvenile Justice Act funds awarded under Title II are limited to 50 percent of the cost of construction.
 - b. Source and Types of Funds. Match for construction programs and/or projects awarded to public agencies must consist of cash appropriated for the use of the recipient public agency by the awarding agency or contributed by a private agency or individual.
7. **Use of Funds.**
 - a. Construction programs and projects funded with the Juvenile Justice Act Title II funds are limited to construction of innovative community-based facilities for less than 20 people which, in the judgment of the Administrator, are necessary to carry out Part B purposes. Consequently, advance approval for all formula grant construction expenditures is required either in the approved plan or in subsequent correspondence. Facilities include both buildings and parts of sections of a building to be used for a particular program or project.
 - b. Erection of new buildings is not permitted with Juvenile Justice Act Title II funds.
 - c. Use of Juvenile Justice Act Title II funds for construction is equally applicable to programs or projects using Formula or Special Emphasis funds.

Professional Services. The customary fixed fee or profit allowance in cost-type contracts may not exceed 10 percent of the total estimated costs. This is applicable to contracts under grants.

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